

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION**

**GLENDALOCKHART, et al.,** )  
)  
**Plaintiffs,** )  
)  
**vs.** ) **CIVIL ACTION NO.:**  
) **5:16-cv-1699-MHH**  
**ANAFRANKLIN, et al.,** )  
) **JURY TRIAL DEMANDED**  
**Defendants.** )

**RESPONSE TO ANA FRANKLIN’S MOTION TO DISMISS THIRD  
AMENDED COMPLAINT**

COME NOW, the Plaintiffs, Glenda Lockhart and Straightline Drywall and Acoustical, LLC, by and through their undersigned attorneys of record, and hereby responds to Ana Franklin's "Partial Motion to Dismiss" the state law claims (Counts Two, Three, Five, and Six) of Plaintiffs' Third Amended Complaint. (Doc. 97) In support thereof, Plaintiffs state and show as follows:

1. Franklin asserts that they are absolutely immune from liability by virtue of their positions as deputy sheriffs.
2. What is glaringly absent from her Partial Motion to Dismiss is well-established Alabama law extending such immunity only “whenever the acts that are the basis of the alleged liability were performed within the course and scope of the officer's employment.” *Ex parte Davis*, 930 So.2d 497, 500–01 (Ala.2005).
3. “The key question, then, is whether Defendants were acting in the

course and scope of their employment.” *Cooper v. Smith*, 2013 WL 252382 \*at 2 (M.D.Ala.2013).

4. In her Motion to Dismiss, Franklin fails to even assert that she was in fact on duty or performing tasks falling within the line and scope of her duties.

5. Plaintiffs assert that Franklin’s actions fell outside the line and scope of her duties as sheriff. Their “criminal” actions in obtaining and executing a search warrant, which were outlined by Judge Thompson in his Order dated April 27, 2018, and their actions in causing property owned by Plaintiffs to be destroyed and/or damaged, were not within the line and scope of their duties as deputy sheriffs. These actions form the basis of Plaintiffs’ invasion of privacy, intentional interference with contractual relations, and civil conspiracy claims. (See Third Amended Complaint, Doc. 79, ¶ 82, 87)

6. Because Franklin offers “no legitimate explanation for their actions”, *Cooper*, at 2, state immunity should not shield them from liability in this case.

WHEREFORE, premises considered, the Plaintiffs respectfully request the Court to deny Franklin’s Partial Motion to Dismiss.

Respectfully submitted,

/s/ Brandy M. Lee  
Brandy M. Lee

/s/ Brice M. Johnston

Brice M. Johnston

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CERTIFICATE OF SERVICE

I certify that on November 14, 2018, a copy of this pleading was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record via the court's electronic filing system.

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/s/ Brandy M. Lee  
OF COUNSEL